IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

Writ Petition No. 6779 of 1995

Between :

M/s. Bhanu Cement Pipe Co., ..
Petitioner

And

Andhra Pradesh Industrial Infrastructure
Corporation Ltd.,
(Govt. of A.P. Undertaking) rep. By its
Zonal Manager, Industrial Estate,
Moulali, Hyderabad – 501 507 and another ..
Respondents

Dated : 28th June, 2006

ORAL ORDER :

The petitioner, a limited company applied to the 1st respondent for allotment of land at Industrial Development Area, Uppal on 28.8.1978 with a view to start an industry of manufacturing cement pipes.

The 1st respondent is a government owned company. By its proceedings dated 23.9.1978, the 1st respondent communicated to the petitioner as follows :

"I am glad to inform you that the Managing Director is pleased to allot an extent of land measuring about two acres on the IDA, Uppal (near Galada Continuous for setting up of your Industry on the out-right sale casting)

basis at Rs.15,000/- per acre subject to the following conditions and such other conditions that are stipulated in the Agreement enclosed to this letter :

(1) that the allottee shall pay 50% of the land cost which works out to Rs.15,000/- (less Rs.1000/- paid by you) within 15 days from the date of receipt of this order.

(2) That the allottee shall pay the remaining 50% of the land cost i.e., Rs.15,000/- within a period of six months with 12% interest per annum from the date of issue of these orders, for which he shall execute a Promissory Note in favour of APIIC Limited.

(3) That the allottee should arrange for the payment of balance to the IDO, I.E., Moulali under intimation to this office.

(4) That the allottee should approach the I.D.O., I.E., Moulali who will arrange for the execution of the agreements in the prescribed proforma and also hand over physical possession.

(5) That the allottee shall pay interest at the rate of 18% per annum after the first six months is over, in case of default.

(6) That the registration of the land will be made in favour of the allottee only after payment of entire amount.

(7) That the allottee should execute an agreement in the form enclosed on a non-judicial stamp paper worth Rs.5/-

(8) That the allottee should furnish an attested copy of SSI Registration Certificate before taking possession of the land in question.

If the payment is not made within 15 days from the date of allotment, these Orders will be treated as cancelled."

The petitioner claims to have paid an amount of Rs.9,000/- on 26.10.1978, another sum of Rs.10,000/- on 10.9.1979 and a sum of Rs.10,000/- on 30.9.1980. In substance, the petitioner claims to have paid entire consideration indicated in the communication referred to earlier.

It is further averred in the affidavit filed in support of the writ petition that "I was given possession of the land after the payment of the first instalment of land cost and the submission of the agreement. The 1st respondent did not execute the agreement and has not chosen to deliver the signed agreement so far."

These allegations are not specifically controverted in the counter affidavit. On the other hand at para 2 of the counter affidavit filed by the respondent corporation, it is stated as follows:

> "2. It is true that the petitioner paid the EMD and part payment of the land cost. The petitioner did not execute the sale agreement on non-judicial stamp paper on the requisite value. The 1st respondent requested the petitioner by his letter dated 30.7.1988 to submit the stamped agreement and to pay the additional land cost; but the petitioner has not so far complied with it."

The petitioner further stated in the affidavit that subsequent to the handing over of the possession of the land to the petitioner, certain third parties tried to encroach the land and the petitioner constrained to file a suit in OS No. 159 of 1978. The said suit was decreed on 4.12.1981. It appears that notwithstanding the decree the attempt to encroach upon the land continued and the petitioner had to request the respondent Corporation to take appropriate steps to protect his possession. It is specifically averred in the affidavit in this regard at para 3 as follows :

> "3……I brought this to the notice of the 1st respondent. The Regional Manager of the 1st respondent has addressed a letter dated 16.12.1989 to the Mandal Revenue Officer, Uppal, requesting him to initiate action to evict the tresspassers. After several efforts and spending of heavy amounts, I could get the hut dwellers vacate the land…."

This allegation of the petitioner is in fact admitted by the respondents in the counter at para 3 of the counter affidavit. It can be seen from the above that even by 16.12.1989, admittedly, the petitioner did not have clear possession of the land in issue. Thereafter, the respondents demanded further payments viz., an amount of Rs.10,516/- towards maintenance and

Rs.51,062/- towards alleged balance cost of the plot. The petitioner, it appears, addressed a letter dated 23.7.1988 demanding the respondents to explain as to how the amount of Rs.51,062/- is due to the respondent. The petitioner, however, paid the amount of Rs.10,516/- towards the maintenance charges. The petitioner also paid an amount of Rs.24,000/- on 17.10.1990 out of the above mentioned amount towards balance cost of the plot. In the meanwhile, the respondent by its letter dated 24.3.1995 called upon the petitioner to surrender the vacant possession of the land on or before 4.4.1995 with a further intimation that failing such surrender of possession by the petitioner, the possession of the plot would be resumed on 8.4.1995 in the presence of the witnesses without any notice. The letter reads as follows :

> "You have been allotted a plot measuring 2 acres of land at IDA Uppal on ORS basis to set up your industry for the manufacture of `cement pipes'.
>
> As you have not paid the land cost dues including additional land cost dues with interest, and failed to implementation of this project for which the allotment was made, even after issue of repeated notices, the allotment orders were cancelled vide ref. 3rd cited.
>
> In the ref. 4th cited, you

> have informed that you paid the total land cost and filed the agreement papers and promised to implement to the project. Basing on the representation, a detailed report on the above subject was already sent to Head Office on 25.10.1990 for restoration of the allotment order.
>
> The Head Office vide their letter dated 25.1.1991 called on you for discussion, and requested to bring the details of your scheme i.e., project report, financial tie ups with financial institutions. But you have not turned up. As such, the Head Office has directed this office to resume the possession of your land.
>
> Consequent to cancellation, you are hereby requested to surrender the vacant possession of plot on or before 4.4.95, failing which possession of the plot will be resumed on 8.4.95 at 3.00 PM in presence of witness without any further notice. The payments made by you will be refunded as per the rules of the corporation."

Challenging the said letter the present writ petition is filed. This Court by an order dated 24.4.1995 granted an interim order.

However, in the meanwhile, the petitioner continued to make representations to the respondent to

permit him to establish his unit in the lands in dispute and explained the reasons for which he could not immediately establish the unit as originally intended. On 7.1.2002, the petitioner made another representation and also paid an amount of Rs.49,500/- to the 1st respondent though I fail to understand as to what was the reason for which the said payment was made. The fact that such payment was made is not controverted in the counter affidavit. On 6.8.2002, the 1st respondent sent a letter to the petitioner that the petitioner's request for restoration of the allotment of land in his favour was accepted subject to the conditions in the said letter and it reads as follows:

> "With reference to your above cited letter, it is informed that, your request for restoration of allotment of land allotted in your favour, it has been decided to consider your request subject to fulfillment of following conditions :
>
> 1) You should pay restoration fee at 3% on the present land cost within 30 days.
>
> 2) You should implement the project within 6 months time (6 months time will be given for implentation of project)
>
> 3) You should withdraw WP No.6779/95 and pay legal expenses incurred by Corporation within one month.

Restoration orders shall be withdrawn if you fail to fulfill the above mentioned conditions within given time.

You are advised to contact Zonal Manager, Moula Ali for further course of action."

By proceedings dated 19.8.2002, the 1st respondent informed the petitioner as follows :

"With reference to your letter 1st cited, it is to inform that the Corporation has decided to restore the allotment of land measuring 7814.55 sq.mts in IDA Uppal subject to the following conditions.

1. You should pay the balance land cost with interest within 30 days 49,492.10
2. You should pay Maintenance Charges within 30 days 14,700.00
3. You should pay restoration Charges at 3% of the present value within 30 days 3,51,654.75
4. You should implement the project in the allotted land within 6 months time.
5. You should withdraw the WP No.6779/95 immediately.
6. You should pay the legal expenses within one month which will be communicated separately.

If any of the above are not complied within the stipulated time, the restoration orders will be withdrawn."

The petitioner enclosed three cheques to the letter dated 20.9.2002 for Rs.49,492/-, Rs.14,700/- and Rs.51,654/- and requested the respondent Corporation to grant some more time to pay balance amount of Rs.3,00,000/-. On 13.10.2003, the respondent addressed a letter to the petitioner stating that as the balance amount was not paid, the offer of restoration was withdrawn. On 24.2.2004, the petitioner made another representation requesting the restoration of the allotment and deposited an amount of Rs.3,00,000/- by way of bankers cheque. It appears the respondent corporation returned the cheque and informed the petitioner that the petitioner would be kept apprised of the developments in the matter.

Sri S.Ravi, learned counsel for the petitioner argued that from the order dated 23.9.1978, it is clear that the respondents agreed to transfer an extent of 2 acres specified in the said proceedings to the petitioner on “out-right sale basis” at a cost of Rs.15,000/- per acre subject to various other conditions enumerated regarding the payment and interest in the event the payments are not made as stipulated coupled with the fact that admittedly the possession of the property was delivered to the petitioner, the respondents have no authority in law to resume the property which is already delivered to the petitioner pursuant to the above mentioned document dated 23.9.1978 which in substance is an agreement of

sale. The learned counsel for the petitioner argued that in view of the provision contained in Section 53A of the Transfer of Property Act, the respondents would not have the power to disturb the possession of the petitioner. Secondly, the learned counsel argued that assuming for the sake of argument that there is some inherent power available to the respondents to resume the land, such a power must be exercised on a rational basis. He submitted that the gist of the correspondence and the counter affidavit filed in the writ petition, is that as the petitioner did not establish the proposed cement pipes manufacturing unit within a reasonable period, the respondents proposed the resumption of the land. For a period of almost more than a decade from the date of the allotment admittedly, the petitioner never had any clear possession of the property and therefore it became impossible for the petitioner to establish the unit in such circumstances and therefore the learned counsel submitted that the decision to resume would be an irrational decision.

The learned counsel for the respondent on the other hand argued that as a matter of policy, the respondent Corporation never executed a Conveyance (Sale Deed) in any case where the land was allotted to an applicant for establishment of an industrial unit unless the applicant established the industrial unit within a period stipulated in the agreement between the corporation and the allottee. The learned counsel

submitted that the allotment and the offer to sell the property was subject to certain conditions relevant in the context being that the allottee in fact establishes the industrial unit within the time agreed upon between the parties at the time of the agreement. Since the petitioner did not establish the industrial unit within the period agreed upon, the respondent corporation has the power to resume the property.

The Law of Transfer of Property in this country is essentially contained in the Transfer of Property Act, 1982. There can be other enactments which to some extent modify the rights and obligations created under the Transfer of Property Act, but insofar as the transaction on hand is concerned, no such law which modifies the rights and obligations created under the Transfer of Property Act is brought to my notice. The document dated 23.9.1978 as rightly pointed out Mr.Ravi, learned counsel for the petitioner is a contract to transfer for consideration immoveable property signed by the Chief Development Officer of the respondent Corporation. Further, admittedly, the petitioner was put in possession of the property pursuant to the said document and also paid part of the consideration within the period stipulated in the said document and the remaining part subsequently with some delay for which as per the document, the petitioner is liable to pay interest. As can be seen from the admitted facts, the entire sale

consideration of Rs.30,000/- as indicated in the document referred to above is received by the respondent. Therefore, the petitioner's possession of the said property cannot be disturbed unless there is some other authority of law enabling the respondents to recover possession of the said property from the petitioner.

The learned counsel for the respondent argued that as a matter of policy of the respondent corporation, document such as the one dated 23.9.1978 is only a letter of allotment, but does not constitute a contract of sale. A contract of sale as such is required to be executed separately between the parties in a prescribed form indicated under Clause 7 of the above mentioned document. The learned counsel further submitted that on the basis of a proforma agreement placed before this Court that the sale deed would be executed in favour of any allottee like the petitioner only after allottee implements the undertaking i.e., the establishment of the industrial unit in the plot allotted to him within the time stipulated in the agreement.

Admittedly, no such agreement exists between the parties to the present writ petition. Though the petitioner asserts, as already noticed that he deposited the requisite stamp for the execution of the agreement, the Corporation never took care to execute the agreement. Without the execution of the agreement, the Corporation chose to hand over the property to the petitioner. Therefore, we are only left with the fact that

there was a document dated 23.9.1978 signed on behalf of the 1st respondent corporation. The authority of the signatory of the document is not disputed by the respondent and from the language of the said document, the terms necessary to constitute a transfer of property in my view can be ascertained with reasonable certainty. The document indicates the decision of the respondent to transfer the land of an extent of two acres "on out-right sale basis" at the cost of Rs.15,000/- per acre and the petitioner admittedly took possession of the property pursuant to the said document and admittedly paid the entire amount indicated in the document. Therefore, the petitioner is protected under Section 53A of the Transfer of Property Act. No other law enabling the respondents to resume possession of the property is brought to my notice.

In the absence of any other agreement entered into by both the parties, the document dated 23.9.1978 does not contain any stipulation regarding the authority of the respondent to resume the property for whatever reasons. The fact that as a matter of practice, the respondent Corporation is entering into separate agreement stipulating such condition and such condition empowering the corporation such as the respondent to resume the property on the various grounds agreed upon between the parties, in my view, is not a ground enabling the respondent corporation to dispossess the petitioner.

If the respondent corporation really wished to retain such power to resume the property for whatever reasons to be agreed between the parties was held legal by the Supreme Court in **Indu Kakkar v. Haryana State I.D.C. Ltd.**,[1] the corporation ought not to have delivered possession before such conditions are agreed upon. Having delivered the possession of the property, it is not open to the corporation to resume possession of the property in view of the clear prohibition contained under Section 53 of the Transfer of Property Act.

Apart from that as laid down by the Supreme Court in **Teri Oat Estates (P) Ltd. V. U.T., Chandigarh and others**[2]**,** "the extreme power of resumption must be resorted to rationally. The Supreme Court held at para 24 as follows :

> "24. It is, therefore, not a case where the court will have to take one stand or the other in the light of the statutory provisions. The question as to whether the extreme power of resumption and forfeiture has rightly been applied or not will depend upon the factual matrix obtaining in each case. Each case may, therefore, have to be viewed separately and no hard-and-fast rule can be laid down therefor. In a case of this nature, therefore, the action of the Estate Officer and other statutory authorities

> having regard to the factual matrix obtaining in each case must be viewed from the angle as to whether the same attracts the wrath of Article 14 of the Constitution of India or not."

Even on that count on the facts of the present case, assuming for the sake of argument that there was an implied condition calling upon the petitioner to establish the industrial unit within a specified period, the fact remains admittedly the petitioner did not have the clear possession of the property until after a decade after the allotment in which case it would be unreasonable to establish an industrial unit on a disturbed piece of property, a fact which is relevant while considering whether the corporation is justified in resorting to the extreme step of resumption of the property already allotted.

Apart from that even the respondent Corporation was willing to permit the petitioner to continue in possession of the property on payment of certain higher amounts. It's a different matter that the Corporation believes that such a decision was classified by the respondent corporation as a `restoration of allotment of land'.

That the petitioner was willing to comply with the new conditions stipulated by the corporation the petitioner made a categoric assertion that in compliance

with the new conditions stipulated the petitioner deposited a sum of Rs.3,50,000/- by way of bankers cheque towards the balance of restoration charges and the corporation returned the bankers cheque to the petitioner would indicate that the corporation is essentially inclined to consider the request of the petitioner to permit him to retain the land though on certain new terms.

In the circumstances, I am of the opinion that the ends of justice in this case would be met by directing the respondent corporation to permit the petitioner to retain possession of the land subject to such rational conditions as are imposed in all similar cases of allotment of land by the corporation. The corporation should indicate the conditions within a period of four weeks from the date of receipt of this order. The writ petition is accordingly disposed of.

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knk 28.06.2006

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[1] AIR 1999 SC 296

[2] (2004) 2 SCC 130